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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1176th MEETING PRINC

Held at the Palais des Nations, Geneva,
on Monday, 19 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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GE.96-17882 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft concluding observations of the Committee concerning the eighth periodic report of the Republic of Korea (CERD/C/49/Misc.5)

Paragraph 2

1. Mr. AHMADU suggested that the phrase "frank discussion" in the last sentence should be replaced by "open discussion".

Paragraph 4

2. Mr. DIACONU (Country Rapporteur) proposed that the word "also" in the first sentence should be deleted.

Paragraph 6

3. Mr. GARVALOV said that the Government of the Republic of Korea had talked for many years about setting up a work permit system for illegal workers, but had not actually done anything. He accordingly suggested that the phrase "notes with interest" should be replaced by "notes".

Paragraph 9

4. Mr. AHMADU suggested that the phrase "translation into Korean" should be replaced by "translation into the Korean language".

Paragraph 12

5. Mr. CHIGOVERA said that paragraph 12 did not reflect his question to the delegation about the way in which the Convention might be directly invoked under domestic law. In his opinion, because of the way the Convention was worded it could not be directly invoked in any legal system.

6. Mr. de GOUTTES said that Mr. Chigovera's point should be duly reflected, since the extent to which the Convention could be directly invoked before the courts was still unclear.

7. The CHAIRMAN, speaking as a member of the Committee, suggested the following wording: "According to explanations given by the delegation of the Republic of Korea, individuals may invoke the provisions of the Convention in the courts, which can implement them directly on the same basis as domestic laws; the Committee nevertheless notes that the principle ...", continuing with the existing text.

8. Mr. GARVALOV said that paragraph 13 did not adequately reflect the concern he had expressed about the situation of ethnic Chinese people who had been born in Korea. For instance, since the principle of jus sanguinis was

still observed in that country, even ethnic Koreans had to provide proof of their Korean blood before they could obtain citizenship. Ethnic Chinese people were, by definition, excluded from citizenship.

9. The CHAIRMAN, speaking as a member of the Committee, suggested that the last sentence should be amended to read: "... for example, inability to obtain Korean citizenship and difficulty in obtaining employment ...".

Paragraph 15

10. The CHAIRMAN suggested that the phrase "the various rights set forth in article 5 of the Convention" should be changed to "the various rights listed in article 5 of the Convention", since article 5 did not establish rights, but merely described those which already existed.

Paragraph 17

11. Mr. CHIGOVERA proposed that the word "compulsory" should be replaced by "mandatory".

Paragraph 18

12. Mr. DIACONU (Country Rapporteur) proposed that the phrase "the obligations stemming from article 4" in paragraph 18 should be replaced by "the provisions of article 4".

13. Mr. CHIGOVERA proposed that "mandatory" should be used in place of "compulsory", as in paragraph 17.

Paragraph 19

14. Mr. CHIGOVERA queried the phrase "the State party should accord the Convention a status superior to that of domestic laws".

15. Mr. WOLFRUM said that, in his opinion, the Committee had no power to ask States parties to take such a step. The relationship between domestic and international law was generally laid down in the Constitution of the country concerned.

16. Mr. SHAHI said that, if a State had undertaken obligations under international law, it should not then seek to evade them by pleading that its constitution or domestic law took precedence over the international instrument concerned. In the Republic of Korea, domestic law could, under certain circumstances, take precedence over the Convention, as had been noted in paragraph 120.

17. Mr. DIACONU (Country Rapporteur) said that it was important to preserve the principle of the primacy of the Convention over domestic law. A State party adopted the Convention at a particular point in time, and it then took precedence over any existing legislation.

18. Following a discussion in which the CHAIRMAN, Mr. RECHETOV, Mr. WOLFRUM, Mr. DIACONU, Mr. FERRERO COSTA, Mr. GARVALOV, Mr. SHAHI and Mr. de GOUTTES

took part, the CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to delete paragraph 19.

19. It was so agreed.

20. Mr. DIACONU (Country Rapporteur) proposed that, if the Committee deleted paragraph 19, it should also delete the reference to lex posteriori in paragraph 12, which would then read: "According to explanations given by the delegation of the Republic of Korea, individuals may invoke the provisions of the Convention in the Courts, which can implement them directly on the same basis as domestic laws".

21. The CHAIRMAN, speaking as a member of the Committee, said that Mr. Diaconu's new version of paragraph 12 should be placed under the heading "Positive aspects", thus becoming new paragraph 10.

Paragraph 20

22. Mr. DIACONU (Country Rapporteur) suggested that the word "labour" should be deleted.

Paragraph 24

23. Mr. CHIGOVERA, supported by Mr. GARVALOV, suggested that the word "full" should be replaced by "comprehensive".

24. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft concluding observations concerning the eighth periodic report of the Republic of Korea, with the amendments proposed during the discussion and subject to possible minor drafting changes.

25. It was so decided.

Draft concluding observations of the Committee concerning the eighth to thirteen periodic reports of Bolivia (CERD/C/49/Misc.14)

Paragraph 2

26. Mr. SHAHI, proposed that the paragraph should contain a reference to indigenous populations.

27. Mr. LECHUGA HEVIA, supported by Mr. SHAHI, proposed that the words "in which one third of the population is living" should be replaced by "principally affecting indigenous communities".

Paragraph 3

28. Mr. LECHUGA HEVIA (Country Rapporteur) proposed that "before the courts" should be deleted.

Paragraph 4

29. Mr. LECHUGA HEVIA, supported by Mr. SHAHI, proposed that the words "principally affecting members of indigenous populations" should be inserted after "extreme poverty".

30. The CHAIRMAN, following observations made by Mr. LECHUGA HEVIA and Mr. GARVALOV, suggested that the beginning of the paragraph should be reworded to read: "The protection of the indigenous population should be improved by the planned adoption of legal provisions ...".

Paragraph 14

31. Mr. LECHUGA HEVIA proposed that the reference to the Law on University Reform should be deleted. The text would then read: "With respect to article 7, which appears to be controversial ...".

Paragraph 19

32. The CHAIRMAN suggested that "further" should be deleted.

Paragraph 20

33. Mr. CHIGOVERA proposed that "new" should be replaced with "next".

Paragraph 21

34. The CHAIRMAN, following an observation by Mr. LECHUGA HEVIA, suggested that the text should be amended to read: "information on how the law on university reform and other related measures will affect minority students and communities" and that the rest of the paragraph be deleted.

Paragraph 22

35. Mr. GARVALOV, supported by Mr. LECHUGA HEVIA, Mr. de GOUTTES, and Mr. SHERIFIS, said that it was not right to refer to the United Nations Decade for Human Rights Education only in the case of Bolivia.

36. The CHAIRMAN suggested that the reference should be deleted.

37. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft concluding observations on the eighth to thirteenth periodic reports of Bolivia, with the amendments proposed during the discussion and subject to possible minor drafting changes.

38. It was so decided.

Draft concluding observations concerning the eleventh and twelfth periodic reports of Malta (CERD/C/49/Misc.8)

39. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) introducing the draft, said that due to an error, which would be corrected in the final version, two paragraphs had been numbered eight.

Paragraph 2

40. Mr. VALENCIA RODRIGUEZ, in response to a query by Mr. Garvalov, said that the word "frank" could be deleted from the last sentence before the word "dialogue".

Paragraph 3

41. Mr. DIACONU suggested that the words "in its report" should be deleted, as the statement in question had been made orally, and that the beginning of the paragraph should read: "The fact that the representative of the State party states that it has been actively studying ...".

Paragraph 14

42. The CHAIRMAN pointed out that, in accordance with past practice, paragraph 14 should be included in the introduction.

43. Mr. VALENCIA RODRIGUEZ pointed out that in the Committee's previous report to the General Assembly it had kept the corresponding paragraph in the suggestions and recommendations section in the case of Croatia.

44. After a brief discussion in which the CHAIRMAN, Mr. SHERIFIS, Mr. van BOVEN and Mr. GARVALOV took part, the CHAIRMAN suggested that, for the sake of consistency, the Committee should keep to the agreement reached the previous year but, in view of the difference of opinion among members, it should reconsider the matter at its next session.

The meeting was suspended from 12.10 to 12.25 p.m.

Paragraph 7

45. Mr. VALENCIA RODRIGUEZ suggested that paragraph 7 should read:

> "7. The Committee is concerned that the Government of Malta, in its report, maintains its official position that it does not need to enact new ad hoc legislation to cover all forms of racial discrimination."

Paragraph 8

46. Mr. VALENCIA RODRIGUEZ suggested that the first sentence of the paragraph should read:

> "While the Committee acknowledges that certain provisions of existing legislation could be utilized to punish racial discrimination, it nevertheless concludes that the Government of Malta has not implemented article 4 of the Convention."

47. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft concluding observations on the eleventh and twelfth periodic reports of Malta, with the amendments proposed during the discussion and subject to possible minor drafting changes.

48. It was so decided.

Draft concluding observations on the tenth to thirteenth periodic reports of Brazil (CERD/C/49/Misc.9) (Document distributed in French only during the meeting)

49. The CHAIRMAN suggested that, as no English text was available, the Committee might go through the introductory paragraphs quickly and that Mr. de Gouttes should then read out the suggestions and recommendations section paragraph by paragraph so that English speakers could benefit from the interpretation, as had been done with other texts.

50. Mr. de GOUTTES (Country Rapporteur) said that the text had been revised to take into account the suggestions made by the Chairman, Mr. Diaconu, Mr. van Boven and Mr. Wolfrum. One phrase had been left in square brackets in paragraph 20 in response to Mr. Diaconu's reservations.

Paragraph 5

51. Mr. de GOUTTES explained that the paragraph had been inserted in response to a suggestion by Mr. van Boven who had drawn attention to the importance of the report by the Special Rapporteur, to which he himself had referred as Country Rapporteur, in his report on Brazil.

52. Mr. RECHETOV pointed out that, if the Committee made reference to the Special Rapporteur's report in connection with Brazil, it would have to refer to other similar reports in the future, for the sake of consistency. In the case of Brazil, the reference could be omitted as the report in question had been done for another body and passed on to the Committee for information purposes only.

53. Mr. WOLFRUM endorsed that view. From the Committee's point of view the report had not been satisfactory, in that it placed very little emphasis on the status and rights of indigenous populations. The paragraph should preferably be deleted, but as a compromise the report might simply be noted.

54. Mr. GARVALOV said he shared the view of the two previous speakers, as a matter of principle. Since the Special Rapporteur's mission had had practically no connection with the Committee's work or its dialogue with the State party, the paragraph should be deleted.

55. Mr. SHERIFIS shared the reservations expressed by previous speakers. His position, as put to the Special Rapporteur, was that the latter should, as a matter of priority, visit States Members of the United Nations that were not States parties to the Convention, since the Committee had no opportunity for dialogue with such States.

56. Mr. van BOVEN said he had suggested including the reference because he had found the Special Rapporteur's report interesting and more illuminating on the situation in Brazil than some of the other information available to the Committee. Furthermore, disappointed though he was that the Committee's interest in the Special Rapporteur's work had apparently not been reciprocated, he had wished to impress on the Special Rapporteur that the

Committee was working towards the same goals and was appreciative of his work. He would defer to the majority opinion if members considered that the reference was out of place, but believed that the wider issue of the Committee's relations with the Special Rapporteur warranted further discussion.

57. Mr. AHMADU said he was in favour of deleting the reference to the Special Rapporteur and his report. He, too, had taken the position that the Special Rapporteur should concern himself with countries which had not ratified the Convention, an example being Benin. Time permitting, the Special Rapporteur could perhaps be invited to discuss his report further with the Committee.

58. Mr. YUTZIS said that the issue was one of substance. At a time when the world was witnessing the growth of new forms of racism and xenophobia, it was politically useful to make a statement recognizing the complementarity between the functions of the Special Rapporteur and the Committee. A minimum expression of such recognition might be for the Committee to "take note" of the Special Rapporteur's report as being complementary to the Committee's work.

59. Mr. SHERIFIS said that the Committee should not take note of a report that had not been addressed to it; he was more than ever convinced of the need to delete the whole reference.

60. Mr. de GOUTTES pointed out that references to the Special Rapporteur's report would appear in the summary record of the Committee's discussion of the country report. While there did not seem to be a consensus in favour of including a specific reference in the concluding observations, that should not prevent the Committee from making suggestions or recommendations for action by the Special Rapporteur in the future, should it deem that the situation in any particular country so warranted.

61. Mr. van BOVEN observed that liaison had been established with other organs both within and outside the United Nations in order to broaden the Committee's access to sources of information. He advocated flexibility in using and referring to such sources. That was the message he had wished to convey to the Special Rapporteur and he hoped that the latter, too, would make use of the Committee's own documents and findings.

62. Mr. YUTZIS said that, although Brazil was not the only country concerned, the Committee's recognition of the value of the work done by other bodies concerned with racial discrimination was strategically important and overdue.

63. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to delete paragraph 5.

64. It was so decided.

Paragraph 10

65. Mr. VALENCIO RODRIGUEZ said that paragraph 10 seemed to suggest that the Committee was opting in favour of integration of the vulnerable groups

mentioned into the majority population. The Committee should state clearly whether it was in favour of integration or whether it considered those groups to be entitled to defend their own rights.

66. Mr. de GOUTTES suggested that, while he had no difficulty with the concept of indicators of "non-integration", a compromise solution might be to replace those words by "particular social difficulties faced by".

Paragraphs 12 and 13

67. Mr. DIACONU pointed out that paragraph 13 referred only to indigenous populations, whereas paragraph 12 also mentioned several other vulnerable groups, which fell within the mandate of other United Nations bodies. He therefore proposed that paragraph 12 should refer only to indigenous populations.

68. The CHAIRMAN suggested that that point should be resumed at the following meeting.

The meeting rose at 1 p.m.